

**IN THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF WEST VIRGINIA**

HUNTINGTON DIVISION

CHARLES F. PLYMAIL,

Petitioner,

v.

CIVIL ACTION NO. 3:14-6201

PATRICK A. MIRANDY,

Warden, St. Mary's Correctional Center,

Respondent.

ORDER

On January 31, 2014, Petitioner Charles F. Plymail filed a *pro se* Petition under 28 U.S.C. § 2254, challenging his 1993 state court conviction for sexual assault and requesting that his conviction be overturned. *State v. Plymail*, 93-F-50 (Cir. Ct. Cabell Cty. W. Va. 1993). On March 19, 2019, this Court adopted the proposed findings and recommendations of the Magistrate Judge, denying Petitioner's Motion for Partial Summary Judgment, granting Respondent Patrick A. Mirandy's Motion for Summary Judgment, and dismissing this case from the docket of the Court. *Plymail v. Mirandy*, No. 3:14-6201, 2019 WL 1258847, at *17 (S.D.W. Va. Mar. 19, 2019). Petitioner appealed.


On August 10, 2021, the Fourth Circuit Court of Appeals reversed this Court's decision and set aside Petitioner's conviction. *Plymail v. Mirandy*, 8 F.4th 308, 320 (4th Cir. 2021), as amended (Sept. 7, 2021). The Fourth Circuit's mandate was filed on September 1, 2021.

Petitioner now has filed a Motion for Summary Judgment and Request for Expedited Ruling. ECF No. 142. In his motion, Petitioner states that he has been on parole since March 2021, and he has plans to move to another state where he has employment and an apartment available to him if he arrives before October 1, 2021. Petitioner therefore seeks an expedited order overruling his prior conviction and directing that he be released from parole so he can pursue these opportunities in another state. The motion is unopposed.

Upon consideration and in light of the Fourth Circuit's Opinion, the Court **GRANTS** Petitioner's Motion for Summary Judgment, **OVERTURNS** his 1993 state conviction in *State v. Plymail*, 93-F-50 (Cir. Ct. Cabell Cty. W. Va. 1993), and **ORDERS** that he be discharged from parole.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented parties.

ENTER: September 16, 2021

A handwritten signature in black ink, appearing to read 'Robert C. Chambers', is written over a horizontal line.

ROBERT C. CHAMBERS
UNITED STATES DISTRICT JUDGE